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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,291	02/11/2002	Patrice J. McCune	MA-12918	2439
7590 11/04/2003				
Fay Sharpe Fagan Minnich & McKee LLP 1100 Superior Avenue Seventh Floor Cleveland, OH 44114-2518				
EXAMINER VO, HAI				
ART UNIT 1771 PAPER NUMBER				

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/071,291

Applicant(s)

MCCUNE, PATRICE J.

Examiner

Hai Vo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,2,5,6 and 8-15.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 0929.
10. ☐ Other: _____

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300-
1700



Continuation of 2. NOTE: The amendments to claim 1 "the foaming layer defining a bottom surface for contacting the household surface" and to claim 2 "the plastic top film impregnated with polycarbonate" raise new issues that would require further consideration and search. Further, the missing of the phrase "cast on said film" before "adjacent to said film" in line 5 of claim 2 also raises new issues.

Continuation of 5. does NOT place the application in condition for allowance because: First, the same reasons are listed in box 2a above. Second, The affidavit will not be considered because good and sufficient reasons why it was not earlier presented have not been shown. There is no photographic data in the affidavit to show that differences in the process would lead to difference in the foam surface of the present invention over the prior art. However, the affidavit would become greatly persuasive if Patrice McCune establishes himself to be an expert in the field to which the invention is related. Accordingly, the art rejections are thus sustained. In addition, the information disclosure statement (IDS) submitted on 09/29/2003 was filed after the mailing date of the Office Action on 07/28/2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.